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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

NICOLE GENDALL,

Plaintiff,

v.

ADVENTIST HEALTH SYSTEM/WEST, a
California Corporation; and DOES 1 through
100, inclusive;

Defendants.

) Case No.: 56-2021-00550034-CU-OE-VTA

) UNLIMITED JURISDICTION

) **COMPLAINT FOR CIVIL PENALTIES**
) **UNDER THE PRIVATE ATTORNEY**
) **GENERAL ACT**



1 Plaintiff Nicole Gendall alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. This is a representative action under the California Private Attorney General Act of 2004
4 ("PAGA") to recover civil penalties for wage and hour violations.

5 2. Plaintiff Nicole Gendall is an individual who resides in Simi Valley, California. From on
6 or about June 26, 2019, through on or about April 18, 2020, Plaintiff worked at Adventist Health
7 Simi Valley Hospital as a "Patient Access Representative." From on or about June 26, 2019,
8 through on or about October 30, 2019, Plaintiff was employed as a contractor and was paid
9 through a third-party. From on or about October 31, 2019, through on or about April 18, 2020,
10 Plaintiff was on the direct payroll of Defendants.

11 3. Plaintiff is informed and believes, and thereon alleges, that Defendant ADVENTIST
12 HEALTH SYSTEM/WEST (hereinafter "Adventist Health"), DOES 1 through 20, inclusive, and
13 each of them, are a California corporation that operates a chain of hospitals and clinics
14 throughout California, including Adventist Health Simi Valley Hospital.

15 4. DOES 21 through 100 inclusive, and each of them, are persons acting on behalf of
16 Adventist Health, DOES 1 through 20, inclusive, and each of them, who violated, or caused to be
17 violated, provisions of the California Labor Code, and are individually liable for civil penalties.

18 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
19 associate, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, and
20 therefore sues these Defendants by such fictitious names and will amend this Complaint to show
21 their true names and capacities when the same are ascertained.

22 **Labor Code § 203 – Untimely Payment of Final Wages**

23 6. Labor Code § 203(a) provides: "If an employer willfully fails to pay, without abatement
24 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5,
25 any wages of an employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or until an action
27 therefor is commenced; but the wages shall not continue for more than 30 days."
28 / / /

1 7. Plaintiff was terminated from her employment in or about April 2020, but was not paid all
2 of her outstanding wages, including the unpaid wages referenced below.

3 8. Plaintiff is informed and believes, and thereon alleges, that the payroll practices of
4 Adventist Health, DOES 1 through 100, inclusive, and each of them, routinely resulted in other
5 aggrieved employees not receiving all wages owed upon their termination. Plaintiff is further
6 informed and believes, and thereon alleges, that these practices are ongoing at each and every
7 California medical facility operated by Adventist Health, DOES 1 through 100, inclusive, and each
8 of them.

9 **Labor Code § 204(a) – Untimely Payment of Wages**

10 9. Labor Code § 204(a) provides: “All wages, other than those mentioned in Section 201,
11 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice
12 during each calendar month, on days designated in advance by the employer as the regular
13 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall
14 be paid for between the 16th and the 26th day of the month during which the labor was performed,
15 and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be
16 paid for between the 1st and 10th day of the following month.”

17 10. From November 1, 2019, through November 15, 2019, Plaintiff worked 68.88 hours. On
18 November 22, 2019, Plaintiff received a paycheck that only included wages for 62.48 hours.
19 Plaintiff was not timely paid for 6.4 hours of work during this period.

20 11. From November 16, 2019, through November 30, 2019, Plaintiff worked 58.03 hours. On
21 December 6, 2019, Plaintiff received a paycheck that only included wages for 49.97 hours.
22 Plaintiff was not timely paid for 8.06 hours of work during this period. Plaintiff was also not
23 timely paid for overtime wages identified below.

24 12. Plaintiff is informed and believes, and thereon alleges, that the payroll practices of
25 Adventist Health, DOES 1 through 100, inclusive, and each of them, routinely resulted in other
26 aggrieved employees not receiving timely payment of wages. Plaintiff is further informed and
27 believes, and thereon alleges, that these practices are ongoing at each and every California medical
28 facility operated by Adventist Health, DOES 1 through 100, inclusive, and each of them.

Labor Code §§ 226 & 226.3 - Paystub Violations

13. Labor Code § 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, ... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

14. While Plaintiff was provided paystubs, they did not accurately reflect the gross wages earned, total hours worked, and net wages earned in each pay period. For example, on or about November 22, 2019, Plaintiff received a paystub for the period November 3, 2019, through November 16, 2019, that included 62.48 hours of work. Plaintiff’s time records show she actually worked 76.95 hours during this period. On or about December 20, 2019, Plaintiff received a paystub for the period December 1, 2019, through December 14, 2019, that included 76.07 hours of work. Plaintiff actually worked 68.37 hours during this period. On or about January 3, 2020, Plaintiff received a paystub for the period December 15, 2019, through December 28, 2019, that included 60.25 hours of work. Plaintiff actually worked 53.75 hours during this period.

15. Plaintiff is informed and believes, and thereon alleges, that the payroll practices of Adventist Health, DOES 1 through 100, inclusive, and each of them, routinely resulted in other aggrieved employees not receiving accurate paystubs. Plaintiff is further informed and believes, and thereon alleges, that these practices are ongoing at each and every California medical facility operated by Adventist Health, DOES 1 through 100, inclusive, and each of them.

Labor Code § 512(a) – Failure to Provide Timely Meal Periods

16. Labor Code § 512(a) provides: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day

without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

17. Plaintiff worked on 38 days from on or about November 3, 2019, through on or about January 11, 2019. Plaintiff was not provided a timely meal period within the first 5 hours of work on 34 of those days, and was not provided a second meal period on at least one day.

18. Plaintiff is informed and believes, and thereon alleges, that the payroll practices of Adventist Health, DOES 1 through 100, inclusive, and each of them, routinely resulted in other aggrieved employees not being provided timely meal periods. Plaintiff is further informed and believes, and thereon alleges, that these practices are ongoing at each and every California medical facility operated by Adventist Health, DOES 1 through 100, inclusive, and each of them.

Labor Code § 226.7 – Failure to Pay Meal Period Penalties

19. Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

20. Plaintiff worked on 38 days from on or about November 3, 2019, through on or about January 11, 2019. Plaintiff was not provided a timely meal period within the first 5 hours of work on 34 of those days, and was not provided a second meal period on at least one day. Respondent failed to pay Plaintiff the meal period penalties required by Labor Code § 226.7(c).

21. Plaintiff is informed and believes, and thereon alleges, that the payroll practices of Adventist Health, DOES 1 through 100, inclusive, and each of them, routinely resulted in other aggrieved employees not being provided meal period penalties. Plaintiff is further informed and believes, and thereon alleges, that these practices are ongoing at each and every California medical facility operated by Adventist Health, DOES 1 through 100, inclusive, and each of them.

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Labor Code § 510 - Failure to Pay Overtime

22. Labor Code § 510(a) provides: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

23. Adventist Health, DOES 1 through 100, inclusive, and each of them, have a written policy that states: “Adventist Health (AH) will establish a ‘workday’ and ‘workweek’ ... for each employee, although a ‘workday’ and ‘workweek’ may be established on a shift, department, job classification or other basis as determined by AH. Each workday for each employee will encompass most of the hours the employee is regularly assigned to work. The workday options are 0000-0000, 0700-0700 and 11:59-11:59.”

24. Plaintiff was primarily scheduled to work from 1100-0700, and therefore, had an assigned workday of 1159 – 1159.

25. Plaintiff is informed and believes, and thereon alleges, that Adventist Health, DOES 1 through 100, inclusive, and each of them, had a routine practice of changing the employee’s workday each pay period minimize overtime.

26. For example, on Plaintiff’s paystub for December 6, 2019, covering the period November 17, 2019, through November 30, 2019, Plaintiff was paid for 49.97 hours, which is the number of hours she worked based on an 1159-1159 workday. If Adventist Health used a 0000-0000 or a 0700-0700 workday, Plaintiff would have worked 50.40 hours during this pay period.

27. If Plaintiff’s overtime wages were calculated based on an 1159-1159 workday, she should have been paid overtime premiums for 3.75 hours. If Plaintiff’s wages were calculated based on a 0700-0700 workday, she should have been paid overtime premiums for 3.68 hours. If Plaintiff’s wages were calculated based on a 0000-0000 workday, she should have been paid overtime premiums for 0.08 hours. On her paystub dated December 20, 2019, Plaintiff was paid an overtime premium for the period November 17, 2019, through November 30, 2019, for 0.08 hours. Accordingly, Adventist Health, DOES 1 through 100, inclusive, and each of them, calculated

1 Plaintiff's regular hours based on a 1159-1559 workday, but calculated her overtime pay based on
2 a 0000-0000 workday, which was the workday that would result in the fewest overtime hours.

3 28. Plaintiff is further informed and believes, and thereon alleges, that these practices are
4 ongoing at each and every California medical facility operated by Adventist Health, DOES 1
5 through 100, inclusive, and each of them.

6 **ADMINISTRATIVE PREREQUISITES**

7 29. Labor Code § 2699.3 provides an aggrieved employee may commence a civil action
8 arising under Labor Code § 2699 after the following requirements have been met:

- 9 a. The aggrieved employee shall give written notice ("Notice") by certified mail
10 to the LWDA and the employer of the specific provisions of the Labor Code
11 alleged to have been violated, including the facts and theories to support the
12 alleged violation.
- 13 b. The LWDA shall notify the employer and the aggrieved employee or
14 representative by certified mail that it does not intend to investigate the
15 alleged violation within 60 calendar days of the postmark date of the notice
16 received. Upon receipt of that notice or if no notice is provided within 65
17 calendar days of the postmark date of the notice, the aggrieved employee may
18 commence a civil action pursuant to Section 2699.

19 30. Plaintiff satisfied these jurisdictional prerequisites. On October 19, 2020, Plaintiff gave
20 notice to the LWDA of Defendants' violations as set forth in this Complaint.

21 31. This same notice was served upon the Defendants in this Action by certified mail on
22 October 19, 2020. See Exhibit "A" attached hereto (PAGA Notice to the LWDA and the
23 Defendants).

24 32. The LWDA Agency provided no Notice within sixty-five (65) calendar days of the
25 postmark date of the notice that it intended to investigate the alleged violations. Plaintiff has,
26 therefore, satisfied the requirements of California Labor Code § 2699.3 and may recover civil
27 penalties, in addition to other remedies, according to proof, for violations of the California Labor
28 Code.

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FIRST CAUSE OF ACTION

**Private Attorney General Act [Labor Code § 2698 *et seq.*]
(Against all Defendants)**

33. Plaintiff repleads, realleges, and incorporates by reference paragraphs 1 through 28, inclusive, as though fully set forth herein.

34. California Labor Code § 2699 provides in pertinent part:

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees...

[* * *]

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

[* * *]

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

[* * *]

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

[* * *]

(g)(1) ... Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

35. California Labor Code § 558 provides in pertinent part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to
an amount sufficient to recover underpaid wages.

[* * *]

3 (3)(c) The civil penalties provided for in this section are in addition to any other
4 civil or criminal penalty provided by law.

5 36. Plaintiff is an aggrieved employee within the meaning of Labor Code § 2699(c) because
6 she was employed by Adventist Health, DOES 1 through 100, inclusive, and each of them, and
7 suffered one or more violations of the Labor Code, including but not limited to Labor Code §§
8 203, 204, 226, 226.7, 510, and 512.

9 37. Plaintiff is informed and believes, and based thereon alleges, that Adventist Health, DOES
10 1 through 100, inclusive, and each of them, has over 28,000 employees in California, and that
11 many of them suffered, and continue to suffer, one or more of the same violations as Plaintiff.

12 38. For each violation of Labor Code § 226, Adventist Health, DOES 1 through 20, inclusive,
13 and each of them, is a liable for a civil penalty of \$250 to \$1,000. For every other violation alleged
14 herein, Adventist Health, DOES 1 through 20, inclusive, and each of them, is liable for a civil
15 penalty of \$100 for the first violation and \$200 for each subsequent violation.

16 39. For each Labor Code violation alleged herein, DOES 21 through 100, inclusive, and each
17 of them, is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

18 40. The precise amount of civil penalties due is not yet known, but could total up to \$62,400
19 per aggrieved employee. Plaintiff is informed and believes, and thereon alleges, there are
20 thousands of aggrieved employees who suffered one or more Labor Code violations, and that the
21 civil penalties will exceed \$5,000,000.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for judgment against Defendants as follows:

24 1. For civil penalties of \$100 to \$200 per aggrieved employee per pay period for each
25 violation of Labor Code § 203.

26 2. For civil penalties of \$100 to \$200 per aggrieved employee per pay period for each
27 violation of Labor Code § 204.

28 ///

10. For such other and further legal and equitable relief as this Court deems necessary, just and proper.

THE GREEN LAW GROUP, LLP

Scott Thomas Green
Matthew T. Bechtel
Attorneys for Plaintiff
Nicole Gendall

EXHIBIT A

THE GREEN LAW GROUP, LLP

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www.TheGreenLawGroup.com

October 19, 2020

Via Certified Mail Return Receipt Requested
and Electronic Submission to LWDA <https://dir.tfaforms.net/295>

COPY: SNYDERSM@AH.ORG

Labor and Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Suite. 801 Oakland, CA 94612 (510) 286-1362 Receipt No.: 9214 7969 0099 9790 1635 7310 31	Adventist Health System/West One Adventist Health Way Roseville, CA 95661 Receipt No.: 9214 7969 0099 9790 1635 7310 93
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Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Nicole Gendall (“Claimant”), on behalf of herself and all others similarly situated in California, gives NOTICE of her intent to commence a civil action pursuant to Labor Code Sections 2698, *et seq.* Claimant hereby gives written notice by online filing with the Labor and Workforce Development Agency, and by certified mail to Adventist Health System/West (“Respondent”). Claimant attaches a statement of facts, as though fully set forth and incorporated herein, setting out the specific provisions of the Labor Code that Claimant alleges are and were violated, including the facts and theories in support of the allegations. Claimant seeks to file a complaint against Respondents in the Los Angeles Superior Court of California seeking, in part, injunctive relief and restitution of wages wrongfully withheld under the Private Attorneys General Act of 2004 (Labor Code §§ 2698 - 2699.6) to seek civil penalties, on behalf of themselves and all similarly situated employees and former employees of Respondents in California within the liability period (“Aggrieved Employees”), for Respondent’s Labor Code violations, including but not limited to Respondent’s violations of Labor Code §§ 203, 204, 226, 226.7, 510, and 512.

Please advise, by certified mail, within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you.

Labor and Workforce Development Agency
Attn. PAGA Administrator
October 19, 2020
Page 2

Should you have any questions or wish to discuss the foregoing in greater detail, please do not hesitate to contact me directly.

Very truly yours,

THE GREEN LAW GROUP, LLP



Matthew T. Bechtel

Attachment: Statement of Facts

STATEMENT OF FACTS

1. ADVENTIST HEALTH SYSTEM/WEST (“Respondent”) is a California Corporation that operates a chain of hospitals and clinics throughout California, with its principal place of business in Roseville, California. Respondent controls and controlled the means and methods of Claimants’ and other Aggrieved Employees’ work tasks and compensation.

2. At all times relevant herein, NICOLE GENDALL (“Claimant”), was and is a female individual residing in the County of Ventura, State of California. Claimant was employed by Respondent as “Patient Access Representative” in Respondent’s Adventist Health Simi Valley Hospital. From on or about June 26, 2019, through on or about October 30, 2019, Claimant was employed as a contractor and paid through a third-party. Claimant was paid directly by Respondent from on or about October 31, 2019, through on or about April 18, 2020.

3. Claimant contends that the Labor Code violations alleged herein were performed knowingly and intentionally and pursuant to a companywide policy enforced by Respondent.

Labor Code § 203 – Untimely Payment of Final Wages

4. Labor Code § 203(a) provides: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

5. Claimant was terminated from her employment in or about April 2020, but was not paid all of her outstanding final wages, including the unpaid wages referenced below.

6. Claimant is informed and believes, and thereon alleges, that Respondent’s payroll practices routinely resulted in Claimant and other aggrieved employees not receiving all wages owed upon their termination. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

Labor Code § 204(a) – Untimely Payment of Wages

7. Labor Code § 204(a) provides: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

8. From November 1, 2019, through November 15, 2019, Claimant worked 68.88 hours. On November 22, 2019, Claimant received a paycheck that only included wages for 62.48 hours. Claimant was not timely paid for 6.4 hours of work during this period.

9. From November 16, 2019, through November 30, 2019, Claimant worked 58.03 hours. On December 6, 2019, Claimant received a paycheck that only included wages for 49.97 hours. Claimant was not timely paid for 8.06 hours of work during this period.

10. Respondent also failed to timely pay overtime wages identified below.

11. Claimant is informed and believes, and thereon alleges, that Respondent's payroll practices routinely resulted in Claimant and other aggrieved employees not receiving timely payment of wages. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

Labor Code §§ 226 & 226.3 - Paystub Violations

12. Labor Code § 226(a) provides: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, ... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

13. Claimant was on Respondent's direct payroll from on or about October 31, 2019, through April 18, 2020, but only performed labor through on or about January 11, 2020. During this period, Claimant was provided paystubs, but they did not accurately reflect the gross wages earned, total hours worked, and net wages earned. For example, on or about November 22, 2019, Claimant received a paystub for the period November 3, 2019, through November 16, 2019, that included 62.48 hours of work. Claimant actually worked 76.95 hours during this period. On or about December 20, 2019, Claimant received a paystub for the period December 1, 2019, through December 14, 2019, that included 76.07 hours of work. Claimant actually worked 68.37 hours during this period. The hours reflected on the December 20 paystub would be accurate if the period was December 1, 2019, through December 15, 2019. On or about January 3, 2020, Claimant received a paystub for the period December 15, 2019, through December 28, 2019, that included 60.25 hours of work. Claimant actually worked 53.75 hours during this period.

14. Claimant is informed and believes, and thereon alleges, that Respondent's payroll practices routinely resulted in Claimant and other aggrieved employees not receiving accurate paystubs. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$250 or \$1,000 for each violation.

Labor Code § 512(a) – Failure to Provide Timely Meal Periods

15. Labor Code § 512(a) provides: "An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

16. Claimant worked on 38 days from on or about November 3, 2019, through on or about January 11, 2019. Claimant was not provided a timely meal period within the first 5 hours of work on 34 of those days, and was not provided a second meal period on at least one day.

17. Claimant is informed and believes, and thereon alleges, that Respondent regularly required Claimant and other aggrieved employees to work more than five hours without receiving a meal period. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

Labor Code § 226.7 – Failure to Pay Meal Period Penalties

18. Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

19. Claimant worked on 38 days from on or about November 3, 2019, through on or about January 11, 2019. Claimant was not provided a timely meal period within the first 5 hours of work on 34 of those days, and was not provided a second meal period on at least one day. Respondent failed to pay claimant the meal period penalty set forth in Labor Code § 226.7(c).

20. Claimant is informed and believes, and thereon alleges, that Adventist Health regularly required Claimant and other aggrieved employees to work more than five hours without receiving a meal period, and without being paid an extra hour of regular pay. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

Labor Code § 510 - Failure to Pay Overtime

21. Labor Code § 510(a) provides: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

22. Adventist Health has a written policy that states: “Adventist Health (AH) will establish a ‘workday’ and ‘workweek’ ... for each employee, although a ‘workday’ and ‘workweek’ may be established on a shift, department, job classification or other basis as determined by AH. Each

workday for each employee will encompass most of the hours the employee is regularly assigned to work. The workday options are 0000-0000, 0700-0700 and 11:59-11:59.”

23. Claimant was on Adventist Health’s direct payroll from on or about October 31, 2019, through April 18, 2020, but only performed labor through on or about January 11, 2020. During this period, Claimant was primarily scheduled to work from 1100-0700. Based on Respondent’s policy, Claimant would have been assigned a workday of 1159 – 1159.

24. On Claimant’s paystub for December 6, 2019, covering the period November 17, 2019, through November 30, 2019, Claimant was paid for 49.97 hours, which is the number of hours she worked based on an 1159-1159 workday. If Adventist Health used a 0000-0000 or a 0700-0700 workday, Claimant would have worked 50.40 hours during this pay period.

25. If Claimant’s wages were calculated based on an 1159-1159 workday, she should have been paid overtime premiums for 3.75 hours. If Claimant’s wages were calculated based on a 0700-0700 workday, she should have been paid overtime premiums for 3.68 hours. If Claimant’s wages were calculated based on a 0000-0000 workday, she should have been paid overtime premiums for 0.08 hours. On her paystub dated December 20, 2019, Claimant was paid an overtime premium for the period November 17, 2019, through November 30, 2019, for 0.08 hours.

26. Claimant is informed and believes, and thereon alleges, that Respondent modifies its workweeks to minimize overtime premiums payable to Claimant and other aggrieved employees. Claimant is further informed and believes, and thereon alleges, that these practices are ongoing. Respondent is liable for a penalty of \$50 for the first violation and \$100 for each subsequent violation.

///Conclusion of Statement of Facts///